

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SAMPSON BRUNSON, )  
                          )  
Petitioner,            )  
                          )  
v.                     )                   1:11CV241  
                          )  
MICHAEL T. BELL,      )  
                          )  
Respondent.            )

**ORDER**

This matter is before this court for review of the Memorandum Opinion and Recommendation ("Recommendation") filed on January 30, 2014, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 12.) In the Recommendation, the Magistrate Judge recommends that Respondent's motion for summary judgment (Doc. 5) be granted, that the Petition (Doc. 2) be denied, and that Judgment be entered dismissing this action. The Recommendation was served on the parties to this action on January 30, 2014. Petitioner filed a response to the Recommendation indicating that he "seeks no objections to the Magistrate Judge[']s Recommendation . . . but asks this [C]ourt to excuse him to withdraw this case [and] to dismiss without prejudice . . . ." (Doc. 14.) In light of the absence of any objection, the court need not conduct a de novo review.

A plaintiff may voluntarily dismiss his case without a court order "before the opposing party serves either an answer or a motion for summary judgment," or by order of the court "on terms that the court considers proper." Fed. R. Civ. P. 41(a). Respondent has filed a summary judgment motion in the instant case (Doc. 5) and, for the reasons set out in the Magistrate Judge's Recommendation, an order of dismissal without prejudice is not proper in this case. The court adopts the Magistrate Judge's Recommendation.

**IT IS THEREFORE ORDERED** that Respondent's Motion for Summary Judgment (Doc. 5) is **GRANTED**, that the Petition (Doc. 2) is **DENIED**, and that this action is dismissed. A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 31st day of March, 2014.

  
\_\_\_\_\_  
United States District Judge